

INDEX OF MEMORANDA
A-509 (A)

No.

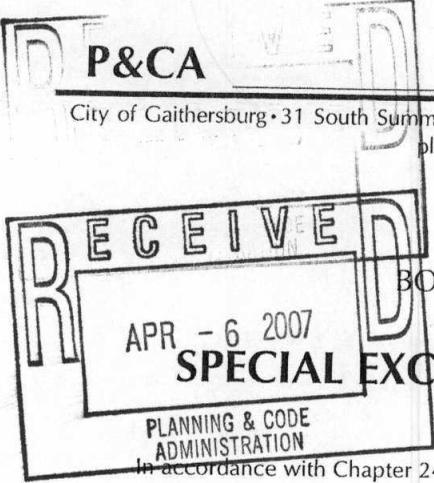
- 1) Application for Special Exception
- 2) Receipt of application fee
- 3) Applicant's Statement and Summary of Proof
- 4) Board of Appeals Resolution A-509
- 5) Lease Supplement Request
- 6) Clearwire LLC – Leasing, Zoning and Permitting Authorization
- 7) Copy of Official Zoning Map
- 8) Letter requesting publication of Notice of Public Hearing for A-509(A) in the April 25, 2007 edition of the *Gaithersburg Gazette*
- 9) Notice of Public Hearing as sent April 25, 2007
- 10) Clearwire Planned System without site MD-WSH009a
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- 12) Photograph of PEPCO tower 84N
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- 14) Site Plan, Sheet Number ZD-1
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- 18) List of all parties notified
- 19) Draft Resolution prepared by staff
- 20) E-Mail from Peter Henry, BP Realty to Tom Waite, Humane Society of United States, April 30, 2007

- 21) E-mail from Peter Henry, BP Realty to Caroline Seiden, May 1, 2007
- 22) E-mail from Robert Dalrymple, Linowes and Blocher, to Caroline Seiden, May 1, 2007
- 23) Letter from Adam Knubel, Network Building and Consulting, LLC, May 2, 2007
- 24) CPC from Planning Commission, with recommendation, May 3, 2007

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PLANNING AND CODE ADMINISTRATION



City of Gaithersburg • 31 South Summit Avenue • Gaithersburg, Maryland 20877 • Telephone: (301) 258-6330 • Fax: (301) 258-6336
plancode@gaitthersburgmd.gov • www.gaithersburgmd.gov

BOARD OF APPEALS

SPECIAL EXCEPTION APPLICATION

PLANNING & CODE ADMINISTRATION

In accordance with Chapter 24, Article VII, Section 24-187-190 of the City Code

A-509(A)

Application No.	AS33
Date Filed	4-6-07
PC Agenda Date	5/2/07
Property Posted	
Legal Ad	
PC Recommendation	
BOA Hearing	5/10/07
Decision	
Time Limit	
Date of Decision	
Opinion Rendered	

84,000 pd

SUBJECT PROPERTY

ADDRESS 501 Professional Dr.
ZONING CLASSIFICATION R-A
LOT _____ BLOCK _____ SUBDIVISION _____

APPLICANT ClearWire US, LLC (Adam Knobel) TELEPHONE 410-459-8573
ADDRESS 7380 Coca Cola Dr., Suite 106, Hanover, MD 21076

SPECIAL EXCEPTION TYPE _____

NATURE OF APPLICATION

Briefly describe application request referencing appropriate section of City Code.

Pursuant to section 24-167A(D)(1) & 24-167A(D)(2) of the zoning ordinance, we are seeking a special exception for a telecommunications facility as described herein

List case numbers of all applications filed within the past three (3) years pertaining to any portion of subject property.

SUBMISSION REQUIREMENTS

1. A written statement explaining the request to the Board of Appeals.
2. Supporting documentation, see list on reverse side.
3. Fees, see separate schedule.

I have read and complied with the submission requirements and affirm that all statements contained herein are true and correct.

Signature

Date 4/6/07

BoA #1 A-509(A) 5/16/07

SUBMISSION REQUIREMENTS

In accordance with Chapter 24, Article VII, Section 24-188(a)(l) of the City Code

An application for a special exception must go to the Planning Commission for a recommendation.

1. **A statement explaining in detail how the Special Exception is to be operated**, including hours of operation, number of anticipated employees, occupants and clientele, equipment involved and any special conditions or limitations which the petitioner proposes for the adoption by the Board of Appeals.
2. **Survey plats, siteplans or other accurate drawings** showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed from the nearest property lines.
3. **Plans, architectural drawings, photographs, elevations, specifications** of other detailed information depicting fully the exterior appearance of the existing and proposed construction, including parking and access, exterior lighting, and signs involved in the petition.
4. **Plans showing conformance with City Environmental Standards for Development Regulation, Chapter 22 of the City Code, and additional landscape and lighting plan.**
5. **Copy of official zoning vicinity map** with a one-thousand-foot radius (circle) surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties. (Zoning map is available from the Planning and Code Administration).
6. **List of names and addresses of adjoining and confronting property owners or occupants** within two hundred feet of the subject parcel. If such property is a condominium, cooperative, or owned by a homeowners' association the petitioner must provide their current address and that of their resident agent. (Information can be researched in Planning and Code Administration.)
7. **The lease, rental agreement or contract to purchase by which the petitioner's legal right to prosecute the petition is established**, if the petitioner is not the owner of the property involved, or the authorized agent of the owner.
8. **Applicable Master Plan maps** reflecting proposed land use, zoning and transportation, together with any other portions of the applicable Master Plan deemed pertinent by the petitioner. (Available from the Planning and Code Administration).
9. **All additional exhibits** which the petitioner intends to introduce and/or the identification of exhibits intended to be introduced at the public hearing.
10. **A summary of what the petitioner expects to prove**, including the names of petitioner's witnesses, summaries of the testimony of expert witness, and the estimated time required for presentation of the applicant's case.
11. **All expert reports shall be filed at least fifteen (15) days prior to the public hearing.**
12. **A list of names and addresses of persons whom you wish to notified of the public hearing**, other than adjacent property owners.
13. **Required fee.**

CRITERIA

In accordance with Chapter 24, Article VII, Section 24-189(b) of the City Code

The Board of Appeals may grant a Special Exception if the proposed use:

- Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in the article.
- Complies with standards and requirements specifically set forth for such use as may be contained in this chapter and the development standards for the zone within which the intended use will be located.
- Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will course no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity.
- Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses.
- Will be consistent with the Master Plan or other planning guides or capital programs for the physical development of the district.
- Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.
- Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements.
- When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

MISCELLANEOUS PAYMENT RECPT#: 38280
CITY OF GAITHERSBURG
31 SOUTH SUMMIT AVE.
GAITHERSBURG MD 20877-2098

DATE: 04/09/07 TIME: 13:06
CLERK: mfullert 1
CUSTOMER#:

PARCEL:

CHG: MISC OTHER MISCELLAN 4000.00

REVENUE:

1 100 441300 4000.00

ZONING/SUBDIVISION FEES

REF1: 501 PROFES REF2: SIONAL

CASH:

001 101000 CASH-BANK OF

4000.00 PAID AMT

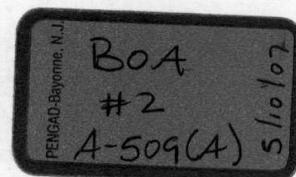
400 PAID BY NAME
CLEARWIRE PAY METHOD
CHECK

00062552

AMT TENDERED:

AMT APPLIED: 4000.00

CHANGE: 4000.00





Gaithersburg
A CHARACTER COUNTS! CITY

CITY OF GAITHERSBURG
31 SOUTH SUMMIT AVENUE, GAITHERSBURG, MARYLAND 20877
301-258-6330

RECEIPT

FROM

NAME

Clearwire U.S.

ADDRESS

FOR

Special Exception
501 professional

✓ 00062554

TOTAL AMOUNT

\$ 4000 -

DATE

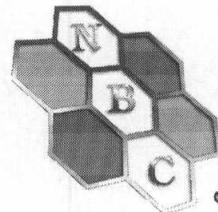
4/6/07

BY

ey

CL

NETWORK BUILDING & CONSULTING, LLC



April 25, 2007

City of Gaithersburg
Planning & Code Administration
31 South Summit Avenue
Gaithersburg, MD 20877
ATTN: Caroline H. Seiden, Planner

RE: Clearwire US, LLC
MD-WSH009
501 Professional Dr.
Zone: R-A

Dear Ms. Seiden:

Pursuant to Sections 24-167A(D)(1) and 24-167A(D)(2) of the Gaithersburg Zoning Ordinance, Clearwire seeks a Special Exception from the Planning Commission and the Board of Zoning Appeals for the proposed telecommunications installation as described herein. The proposed installation is critical to Clearwire's goal of providing state-of-the-art coverage and capacity in the vicinity of the Professional Dr. and Route 355.

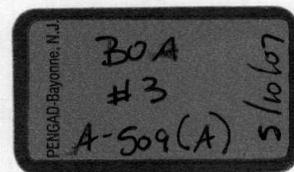
SITE HISTORY

T-Mobile was previously granted a special exception to operate and maintain nine (9) panel-type antennas measuring approximately 54 inches high x 12 inches wide x 4 inches in depth attached to the PEPCO tower #84-N at a height of approximately 116 feet and a 10 foot x 14 foot (140 square feet) concrete equipment pad containing three (3) equipment cabinets at a height of 63" high x 51 inches wide x 37 inches deep. This application was adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 10th day of July, 2003. On PEPCO Tower 84S immediately to the south of the subject tower was the subject of two special exceptions for similar installations by Nextel Communications (A-486) and AT&T Wireless (A-474).

SITE DESCRIPTION

Clearwire proposes to install a telecommunications installation consisting of four (4) panel and four (4) dish antennas on a 124-foot transmission tower at 501 Professional Drive. The antennas will be attached to a Fort Worth tower at a height of 134 feet. The associated radio equipment will be located at the base of the tower within a fenced compound.

By locating our facilities on this existing structure, Clearwire's installation will have minimal visual impact on the surrounding area and will avoid the construction of new structures. Clearwire plans to use Stella Doradus SD9890 antenna measuring 36"x 6"x 5" and Andrew P2F-52 dish antenna measuring 25" in diameter and 6"



deep. The proposed equipment cabinet, which will contact communications equipment connecting the proposed antennas to the larger Clearwire network, will be placed at the base of the tower within a fenced compound.

Clearwire is leasing the space from PEPCO for the proposed site. A copy of the redacted lease agreement has been included for you records. The proposed site will operate continuously, but will not require any employees or occupants. The site will be maintained with monthly visits by Clearwire to ensure proper operation.

RADIO FREQUENCY NEED FOR PROPOSED SITE

Clearwire is seeking to launch its wireless broadband network into this market. The accompanying plots were prepared to show what the proposed network coverage would be with and without this site. The light green areas show the proposed coverage areas. As the accompanying plots show, Clearwire's service in the vicinity of site 009a is sporadic at best without the proposed site. The proposed site would alleviate this deficiency.

CONFORMANCE WITH ZONING ORDINANCE

We respectfully submit that the proposed site is in conformance with applicable provisions of the Gaithersburg Zoning Ordinance. Those provisions are as follows:

Sec. 24-167A. Satellite television antennas and towers, poles, antennas and/or other structures intended for use in connection with transmission or receipt of radio or television signals and/or telecommunications facilities.

(D) Telecommunications facilities.

1. Standards when allowed as permitted use. The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

(a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least thirty (30) feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least thirty (30) feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling.

Clearwire respectfully submits that this subsection does not apply to the proposed transmission tower facility.

An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than twenty-five (25) percent of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than twenty-five (25) percent of the roof area may be approved by the board of appeals as a special exception in accordance with subsection 2 of this section.

Clearwire respectfully submits that this subsection does not apply to the proposed transmission tower facility.

(b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free-standing monopole including antenna structure for a telecommunications facility is permitted up to one hundred ninety-nine (199) feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half (1/2) foot for every foot of height from adjoining non-residential properties.

Clearwire respectfully submits that this subsection does not apply to our proposed rooftop facility.

(c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed five hundred sixty (560) square feet and twelve (12) feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.

As shown in the enclosed drawings, the transmission tower facility is existing.

(d) Public property.

(i) A private telecommunications facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the city shall be at the discretion of the city council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The city council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the city.

(ii) A private telecommunications facility may be located on public property of or attached to an existing structure owned or operated by a county, state, federal or other non-city governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.

Clearwire respectfully submits that this subsection does not apply to the proposed site on private property.

(e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.

As shown in the enclosed drawings, the proposed antennas are located and designed so as to minimize visual impact on surrounding properties and from public streets.

(f) No signs are permitted in connection with any telecommunications facility.

(g) No lights are permitted on any monopole or antenna unless required by the federal communications commission, the federal aviation administration, or the city.

Clearwire will not attach any signs or lights to the proposed site.

(h) All monopoles erected as part of a telecommunications facility must maintain at least three (3) telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three (3) telecommunications carriers may be permitted by special exception when approved by the board of appeals.

(i) No more than one monopole is permitted on a lot or parcel of land and, no two (2) monopoles may be located within one thousand (1,000) feet of each other in any zone in which such facilities are permitted uses. In any such zone, more than one monopole may be permitted on a lot or parcel and two (2) or more monopoles may be located within one thousand (1,000) feet of each other by special exception approved by the board of appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two (2) or more monopoles within one thousand (1,000) feet of each other may only be approved by the board of appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.

Clearwire respectfully submits that this subsection does not apply to our proposed transmission tower facility.

(j) Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

Clearwire will remove any equipment buildings at its cost when the telecommunications facility is no longer in use.

- 2. Standards and requirements applicable to special exceptions for telecommunications facilities.*
- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:*
- (1) Complies with all of the standards contained in section 24-167A(D)1.*

As described above, Clearwire submits that its proposed site complies with all standards contained in section 24-167A(D) 1.

- (2) The location selected is necessary for the public convenience and service.*

As discussed in the “Radio Frequency Need for the Proposed Site” above, Clearwire submits that the proposed site is necessary for coverage and capacity for the proposed network in the Gaithersburg area.

- (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.*

Admittedly, the proposed site already houses the facilities of other wireless carriers. That said, the proposed co-location on an existing structure avoids the construction of a new tower, and does not lead to an “over-concentration” of freestanding structures.

- (4) The location selected for a monopole is more than three hundred (300) feet from either the nearest boundary of a historic district or more than three hundred (300) feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.*
- (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two (2) additional antennas and related equipment buildings or cabinets unless co-location is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.*

Clearwire respectfully submits that this subsection does not apply to our proposed transmission tower facility.

- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least thirty (30) feet in height in any multifamily residential zone or non-residential zone; and fifty (50) feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.*

The transmission tower on which the proposed site will be located is 124 feet in height and exceeds the minimum height requirements. The transmission tower on which the proposed site will be located is not a one-family residential dwelling.

- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the board of appeals must find that it is to be located at a height at least thirty (30) feet on a building located in a multifamily residential zone or non-residential zone and at a height greater than fifty (50)*

feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.

Clearwire respectfully submits that this subsection does not apply to the proposed transmission tower facility.

(8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed five hundred sixty (560) square feet and twelve (12) feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three (3) feet. The board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.

Clearwire respectfully submits that the proposed cabinet does not exceed 560 square feet nor 12 feet in height, please see attached drawings.

(9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.

The proposed equipment cabinet is located at the base of the transmission tower.

(10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional ten (10) percent. The board must also find that the structure is not visually intrusive.

Clearwire respectfully submits that this subsection does not apply to the proposed transmission tower facility.

(11) The board must also find that a free-standing monopole or other support structure is proposed to hold no less than three (3) telecommunications carriers. The board may approve a monopole or other support structure with fewer than three (3) telecommunications carriers if the applicant establishes that: (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna; or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

(1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (c).

(2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.

(3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.

(4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

(c) Location requirements for structures. A monopole or other support structure must be located as follows:

- (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.*
- (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half (1/2) foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.*

Clearwire respectfully submits that this subsection does not apply to our proposed transmission tower site.

- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.*
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the federal communications commission, the federal aviation administration or the board.*
- (f) Removal of telecommunications facilities. Every free-standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.*

Due to the extensive and prolonged review by regulatory agencies of applications for licenses to operate commercial radio or television broadcasting stations, the establishment of such use may be initiated for up to five (5) years from the date of the decision of the city council, or from the date of a final decision of any appeal filed therefrom. Appeals may be filed to any decision of the city council under this subsection (C) of section 24-167A in the same manner as provided generally from appeals to decisions of the board of appeals under section 24-193 of this Code.

Clearwire will not attach any signs or lights to the proposed installation. We promise to remove all equipment associated with this facility at our cost when the facility is no longer in use.

In support of this application, attached please find the following supplemental materials:

- (a) Zoning map with circle showing approximate search area for this site;
- (b) Agency statement on Clearwire letterhead;
- (c) Zoning drawings;
- (d) Redacted copy of the lease; and
- (e) Propagation maps showing site names.

If you have any questions or need further information, please contact me at (410) 712-7092 Ext. 1083. Thank you for your assistance with this submission.

Sincerely,

Adam R. Knubel
Zoning Manager
Network Building & Consulting, LLC
(consultants to Clearwire)

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

AN APPLICATION REQUESTING A SPECIAL EXCEPTION TO ERECT
A TELECOMMUNICATION FACILITY ATTACHED TO THE PEPCO TOWER
#84-N LOCATED IN THE R-A (LOW DENSITY RESIDENTIAL) ZONE AS ALLOWED BY
SECTION 24-25(11) OF THE ZONING ORDINANCE (CHAPTER 24 OF
THE CITY OF GAITHERSBURG CODE), EAST OF PROFESSIONAL DRIVE
IN THE PEPCO RIGHT-OF-WAY, GAITHERSBURG, MARYLAND.

A-509

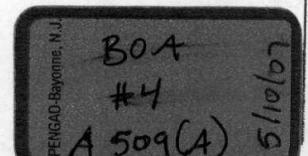
OPINION

This matter has come before the Board of Appeals as a special exception request for a telecommunications facility consisting of nine (9) panel-type antennas attached to the Potomac Electric Power Company (PEPCO) Tower #84-N and a screened 10 foot x 14 foot (140 square feet) concrete equipment pad and three (3) equipment cabinets under six (6) feet in height. The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter. This case concerns a request for the approval of a telecommunications facility attached to the PEPCO tower #84-N and related ground equipment east of Professional Drive in the PEPCO right-of-way (ROW) in Gaithersburg, Maryland in the R-A (Low Density Residential) Zone.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [Section 24-25(11)] in the R-A Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

Mr. Mikel Budde, Omnipoint Communications CAP Operations, LLC (a subsidiary of T-Mobile USA, Inc.), originally filed the application and exhibits on June 18, 2003. The application requested a special exception for a telecommunications facility (antennas and related ground equipment) on an existing PEPCO tower east of Professional Drive in the R-A (Low-Density Residential) Zone, Gaithersburg, Maryland.



In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their July 2, 2003 regularly scheduled meeting. Following introduction and discussion from City of Gaithersburg staff and the applicant, the Planning Commission analyzed the application and made a recommendation to the Board of Appeals that the special exception be approved.

The Board of Appeals held a public hearing on Thursday, July 10, 2003, at 7:30 p.m. at City Hall. Notice of the public hearing was published in the June 25, 2003, issue of the *Gaithersburg Gazette*; the property was properly posted, and notice of public hearing was sent to the applicant and surrounding property owners on June 25, 2003.

The Board reviewed 28 exhibits, including the Applicant's summary of proof, plans with tower and antenna specifications, the lease agreement, coverage projection maps, antenna and installation photographs and the recommendation of the Planning Commission. Planner Seiden noted that the PEPCO Tower 84S immediately to the south of the subject tower was the subject of two special exceptions for similar installations by Nextel Communications (A-486) and AT&T Wireless (A-474). A 15 foot wide stone access drive was installed as part of the A-474 special exception and is proposed to be extended to Tower #84-N. Steven Weber, an independent agent representing Omnipoint Communications presented argument on behalf of the applicant citing the applicant's compliance with Section 24-167A, of the Zoning Ordinance. Mr. Abiy Zewde, Radio Frequency Engineer, was also present. There was no testimony in opposition to the subject request. Chairperson Kaye requested that a letter be forwarded to the Board of Appeals from Mr. Mikel Budde, the initial applicant representing Omnipoint Communications, stating that Steven Weber has been authorized to represent Omnipoint Communications on this matter. Following the testimony and arguments, the Board closed the record with the exception of the inclusion of the above-mentioned letter.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

* * *

DIVISION 1. R-A ZONE, LOW DENSITY RESIDENTIAL

* * *

Sec. 24-25 . Uses permitted as special exceptions.

* * *

(11) Telecommunications facilities, subject to requirements of Section 24-167A(D)1.&2.

* * *

Section-24-167A. Satellite television antennas and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals and/or telecommunications facilities.

* * *

(D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) *Public Property.*
 - (i) A private telecommunication facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the city shall be at the discretion of the city council and shall not be subject to the same conditions and requirements as

are applicable to such facilities on privately owned property. The city council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the city.

- (ii) A private telecommunications facility may be located on public property of or attached to an existing structure owned or operated by a county, state, federal or other non-city governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.
- (e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the federal communications commission, the federal aviation administration, or the city.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three (3) telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three (3) telecommunications carriers may be permitted by special exception when approved by the board of appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two (2) monopoles may be located within one thousand (1,000) feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two (2) or more monopoles may be located within one thousand (1,000) feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within one thousand (1,000) feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.
- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.
- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
- (1) Complies with all of the standards contained in Section 167A(C)1.
 - (2) The location selected is necessary for the public convenience and service.
 - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
 - (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
 - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two additional antennas and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
 - (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least thirty (30) feet in height in any multi-family residential zone or non-residential zone; and fifty (50) feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
 - (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least thirty (30) feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
 - (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or

parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.

- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
 - (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
 - (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.
- (b) Area requirements.
- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (c).
 - (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
 - (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
 - (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any,

and the visibility of the monopole or other support structure from adjacent streets.

- (c) Location Requirements for structure. A monopole or other support structure must be located as follows:
 - (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
 - (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (c) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

* * *

ARTICLE VII. Board of Appeals.

* * *

Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

- (b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

The board of appeals shall prescribe a time limit within which the use for which the special exception is required shall be commenced or completed. Failure to begin or complete, or both, such action within the time limit set shall void the special exception unless otherwise extended by the board.

* * *

Sec. 24-189. Findings required.

* * *

(b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

- (1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article;
- (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;
- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;
- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;
- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Findings and Conclusions

Based on the appellants' arguments, binding testimony and evidence of record, the Board finds that the application proposes to construct, operate and maintain nine (9) panel-type antennas measuring approximately 54 inches high x 12 inches wide x 4 inches in depth attached to the PEPCO tower #84-N at a height of approximately 116 feet and a screened 10 foot x 14 foot (140 square feet) concrete equipment pad containing three (3) equipment cabinets at a height of 63" high x 51 inches wide x 37 inches deep. The location of the antennas is within the R-A (Low-Density Residential) Zone and is allowed by special exception as stated in Section 24-25(11) of the Zoning Ordinance (Chapter 24 of the City Code).

The applicant has shown that the height of the southern PEPCO lattice tower east of Professional Drive is approximately 124 feet and the proposed antennae will be erected at a height of approximately 116 feet within the existing lattice tower structure. The unmanned equipment cabinets for the antennae are located on the ground on a 10 foot x 14 foot concrete pad approximately 9 feet north of the base of the PEPCO tower. The equipment cabinets will be enclosed by a seven (7) foot chain link fence and one (1) foot barbed wire fence on top of the chain link fence. The cabinets will be further screened from view by sixteen (16) Leyland cypress trees. The visual impact of the proposed antennae is limited due to the fact that they are located within and attached to the existing transmission tower structure. The propagation maps have shown that location selected will enhance the coverage for public convenience and service and fill a hole within the T-Mobile system.

The Board finds that the applicant has proved that the application is permissible by Section 24-25(11) and that it complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the master plan of Neighborhood Six in which this property is located. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(D)1. and 2. as discussed in the previous section.

The testimony of the applicant's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable, vibrations, fumes, odors, dust, toxicity, glare or physical activity. The T-Mobile system has received approval from the Federal Communications Commission. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

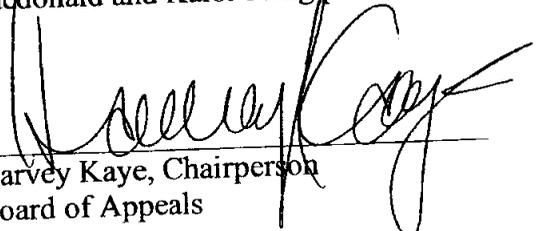
Because the antennae are to be camouflaged within the PEPCO Right of Way as attached to the lattice tower which is 124 feet in height, the applicant has shown that this application is in harmony with the general character of the neighborhood in relation to the design and scale of the antennae. This will also maintain a similar appearance as the lattice tower and not require additional landscaping or screening. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The land and structure will not increase the need for more services. The applicant has shown that this use is not located near or within any of the City's historic districts. In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a telecommunications facility by Mr. Weber. The applicant has shown compliance with Sections 24-167A(D)1. and 2. and 24-189(b).

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 10th day of July, 2003, that Case A-509, the petition of Omnipoint Communications requesting a special exception for a telecommunications facility in the R-A (Low Density Residential) Zone attached to PEPCO tower #84-N east of Professional Drive, Gaithersburg, Maryland, be APPROVED with the following condition.

1. At such time as Omnipoint Communications CAP Operations LLC ceases to operate, the antennas, cabinets and associated equipment must be removed.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 10th day of July, 2003. Board Members Kaye, Knoebel, Macdonald and Karst being present and voting in favor of the action.


Harvey Kaye, Chairperson
Board of Appeals

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 10th day of July, 2003


Caroline Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

MD-WSH009

Exhibit A

**Lease Supplement Request
(use Attachments if Required)**

Lease Supplement No.: CLEARWIREML-S8 Rev. ___ **Dated:** January 29, 2007

The Lease Supplement Request for the initial installation of 4 antennas and 4 Microwave dishes is requested pursuant to the Master Facility Lease Agreement dated January 5, 2007 between Potomac Electric Power Company (PEPCO/Lessor) and Clearwire US LLC, (Clearwire/Lessee).

Tower/Pole Location: Pepco's Dickerson to Burtonsville 230 k/v Transmission Line, Tower #84N FWT, Pepco Property # M-35, Property Tax ID # 09/7755486, Tax Map # FT23, Parcel 370, Liber 2465 Folio 390, ADC Mont Co. Map 19-A5; Clearwire Site # MD-WSH009

Location & Space Required on Tower/Pole (Antenna center height):

Fort Worth Tower mount with an antenna center line of 134' +/-

Equipment to be installed on Tower/Pole:

Four (4) Panel antennas, Four Microwave Dishes, and up to Twelve (12) coax cables.

Equipment to be Installed and Dimension of Ground Facility:

10' x 10' lease area with one DDB- Unlimited Equipment Cabinet 50" by 30" by 30" (HxWxL) equipment cabinet and four (4) Nextnet BTS Model BTS2500 amplifier boxes mounted on an H frame, plus one Trimble Acutime Model 2000 GPS antenna mounted on equipment cabinet or ice bridge.

Contact Person and Telephone Number:

Pepco: Brian Scalio 202-388-2531

ClearWire: Allen Hinkley, Site Acquisition Consultant, (607) 326-2915

Requested Term: 5 years with 2 optional 5 year renewal terms

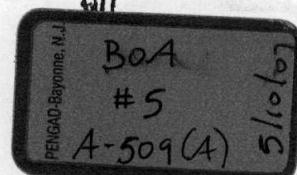
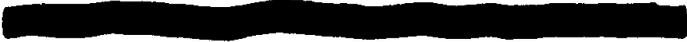


Exhibit A-1

Data Listing for Lease Supplement

Lease Supplement No.: CLEARWIREML-S8 Rev. Dated: January 29, 2007

1. **Name of Lessee Affiliate:** Clearwire US LLC
2. 
3. **Site Latitude and Longitude:** 39°-9'-39.6" N, 77°-13-36" W
4. 
5. **Site Lessor-Owned:** Yes
6. **Special Access Requirements:** Base Equipment is accessible 24 hour X 7 days a week. Lessee may only climb with a Lessor representative present.
7. **Site Access:** Enter off of Professional Dr. Lessee is to build and maintain as required by Lessor a gravel driveway and site footprint along with any necessary gates and barricading. Lessee is to abide by Lessor's Wireless Attachment Procedures & Guidelines Protocol.
8. **Lessor Contact for Access for Emergency:** Richard Petkoff 202-388-2479, Transmission System Operator 301-469-5343
9. **Lessee Contact for Emergency:** Network Operations Center: (866)316-7575
10. **Lessee's Address for Notice Purposes:**
Clearwire US LLC
5808 Lake Washington Blvd.
Suite 300
Kirkland, WA
Attn: Lease Administration
11. **Antenna Centerline Height:** 134' ± AGL

Lessor: Potomac Electric Power Company

Lessee: Clearwire US LLC

By: William M. Gausman
William M. Gausman

By: John Storch
John Storch

Title: Vice President Asset Management

Title: Vice President Network Operations

Date: 3/1/17

Date: 02-05-07



5808 Lake Washington Blvd. NE
Suite 300
Kirkland, WA 98033

PHONE:
425.216.7600

FAX:
425.216.7900

ONLINE:
www.clearwire.com

February 2, 2007

Re: Clearwire LLC- Leasing, Zoning and Permitting Authorization

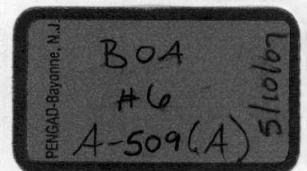
To whom it may concern,

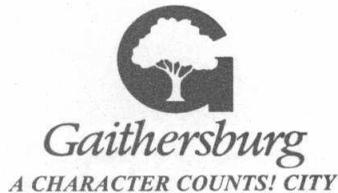
Please be advised that Network Building and Consulting ("NBC") is performing work for Clearwire US LLC ("Clearwire") in the Washington DC and Virginia markets. Clearwire hereby authorizes NBC to act on behalf of Clearwire for the sole purpose of leasing and acquiring zoning and permit approvals to ensure Clearwire's ability to construct and operate its broadband services network. This authorization shall not be construed as a commitment of any type, and all final terms will be subject to Clearwire's approval.

Sincerely,
CLEARWIRE US LLC

Name: Eamon O'Leary

Title: VP Engineering





April 19, 2007

Ashby Tanner
Law Section
The Gaithersburg Gazette
P.O. Box 6006
Gaithersburg, MD 20884

Dear Ashby:

Please publish the following legal advertisement in your April 25, 2007 issue of the *Gaithersburg Gazette*.

Sincerely,

Caroline H. Seiden
Planner

chs

ASSIGN CODE: PHA-509(A)/Acc. #133649

NOTICE OF PUBLIC HEARING

The Board of Appeals of the City of Gaithersburg will hold a public hearing on A-509 (A), filed by Clearwire US, LLC, on

THURSDAY
MAY 10, 2007
AT 7:30 P.M.

or as soon thereafter as it may be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland. The application requests a Special Exception to permit a telecommunications facility, to include four panel antennas and four dish antennas on an existing Pepco transmission tower, (84N), and associated ground equipment at the PEPCO transmission line off of Professional Drive, Gaithersburg, Maryland. The property is located in the R-A (Low Density Residential) Zone. The Special Exception is allowed by §24-25(11) in compliance with §24-167A(D)1.& 2. of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Caroline H. Seiden
Planner

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098

301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitthersburgmd.gov • www.gaitthersburgmd.gov

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humpton

ENGAD-Bejonne, N.J.
BOA
#8
A-509(A)
5/10/07

MODE = MEMORY TRANSMISSION

START=APR-19 12:57

END=APR-19 12:59

FILE NO.=226

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	<11>	GAZ LEG	004/004	00:01:11

-THE CITY OF GAITHERSBURG -

***** -PLAN AND CODE - ***** 3012586336-*****



Gaithersburg
A CHARACTER COUNTS! CITY

FAX TRANSMITTAL FORM

SEND TO: Ashby Tanner
Gazette

FAX NO.: _____

FROM: Caroline Seiden
Planning & Code Administration

FAX NO.: 301-258-6336

TELEPHONE NO.: 301-258-6330

DATE: 4/19/07 TIME: 12:47

NO. OF PAGES ATTACHED: 3

MESSAGE:

Ashby :
Attached are three legal ads (A-509(A), A-477(A)
and A-531) for the April 25 Gaithersburg Gazette.
Thanks!

**IF YOU EXPERIENCE DIFFICULTY IN RECEIVING THIS TRANSMISSION,
PLEASE CALL 301-258-6330**

City of Gaithersburg 31 South Summit Avenue Gaithersburg, MD 20877-2098
plancode@gaitHERSBURGMd.gov www.gaitHERSBURGMd.gov

MAYOR
Sidney A. Katz

CITY COUNCIL MEMBERS
Stanley D. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Michael A. Sesma

CITY MANAGER
David B. Humpton

From: "Rice, Ashby" <arice@gazette.net>
To: "Caroline Seiden" <CSeiden@gaithersburgmd.gov>
Date: 04/19/2007 1:24:32 PM
Subject: RE: Legal Ads for April 25

Hi Caroline,

Ads will be published as requested. Thank you!!!

Ashby Tanner
Legal Advertising Manager
TheGazette
301-670-2620 (office)
301-670-2634 (fax)
arice@gazette.net

LEGAL DEADLINES

Fridays Politics & Business Friday Edition: Tuesday's @ 5 pm
Classified ads for Montgomery Co. Editions: Tuesday's @ Noon
Classified ads for PG & Frederick Co. Editions: Wednesday's @ Noon
ALL A-Section ads: Friday's @ 5 pm

-----Original Message-----

From: Caroline Seiden [mailto:CSeiden@gaithersburgmd.gov]
Sent: Thursday, April 19, 2007 12:50 PM
To: Rice, Ashby
Subject: Legal Ads for April 25

Hi Ashby:

Attached are three legal ads for the April 25, 2007 Gaithersburg Gazette. I forwarded FAXes for these as well. Thanks!

Caroline

Caroline Seiden
Planner
Staff Liason to Board of Appeals
Planning and Code Administration
301-258-6330 ext. 2128

31 S. Summit Avenue
Gaithersburg, MD 20877

cseiden@gaithersburgmd.gov
www.gaithersburgmd.gov

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6330
A CHARACTER COUNTS! CITY
BOARD OF APPEALS
NOTICE OF PUBLIC HEARING

The City of Gaithersburg Board of Appeals will conduct a Public Hearing on a Special Exception as noted below.

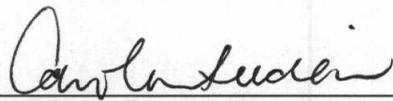
Application Type: **SPECIAL EXCEPTION**
File Number: **A-509(A)**
Location: **PEPCO TOWER 84N EAST OF PROFESSIONAL DRIVE**
Petitioner: **ADAM KNUBEL FOR CLEARWIRE US, LLC**
Day/ Date/Time: **THURSDAY, MAY 10, 2007, 7:30 P.M.**
Place: **COUNCIL CHAMBERS**
31 SOUTH SUMMIT AVENUE

In accordance with Section 24-187, of the City of Gaithersburg Zoning Ordinance, the Board of Appeals will conduct a public hearing on the above-referenced application in the Council Chambers at City Hall, 31 South Summit Avenue, on **Thursday, May 10, 2007**, at 7:30 p.m. or as soon thereafter as this matter can be heard. In addition, the Planning Commission will be reviewing the above-referenced application on **Wednesday, May 2, 2007**, at 7:30 p.m. in the Council Chambers at City Hall.

The application requests a Special Exception to permit the installation of four panel antennas and four dish antennas on an existing PEPCO transmission tower, 84N, and associated ground equipment at the PEPCO Transmission line east of Professional Drive, Gaithersburg, Maryland. The property is located in the R-A (Low Density Residential) Zone. The special exception is allowed by Section 24-25(11) in compliance with Sections 24-167A(D)1. & 2. of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) subject to the review of the Board of Appeals.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

CITY OF GAITHERSBURG

By: 
Caroline H. Seiden
Planner
Planning & Code Administration

PEMGAD-Bayonne, N.J.

BOA
9
A-509(A)

NOTICES SENT THIS 25TH DAY OF APRIL, 2007, TO:

APPLICANT:

Adam Knubel for Clearwire US, LLC, 7380 Coca Cola Drive, Suite 106, Hanover, MD 21076

INTERESTED PARTIES AND PROPERTY OWNERS WITHIN 200 FEET OF SUBJECT PROPERTY:

(A complete list is available in the Planning and Code Administration.)

CITY STAFF:

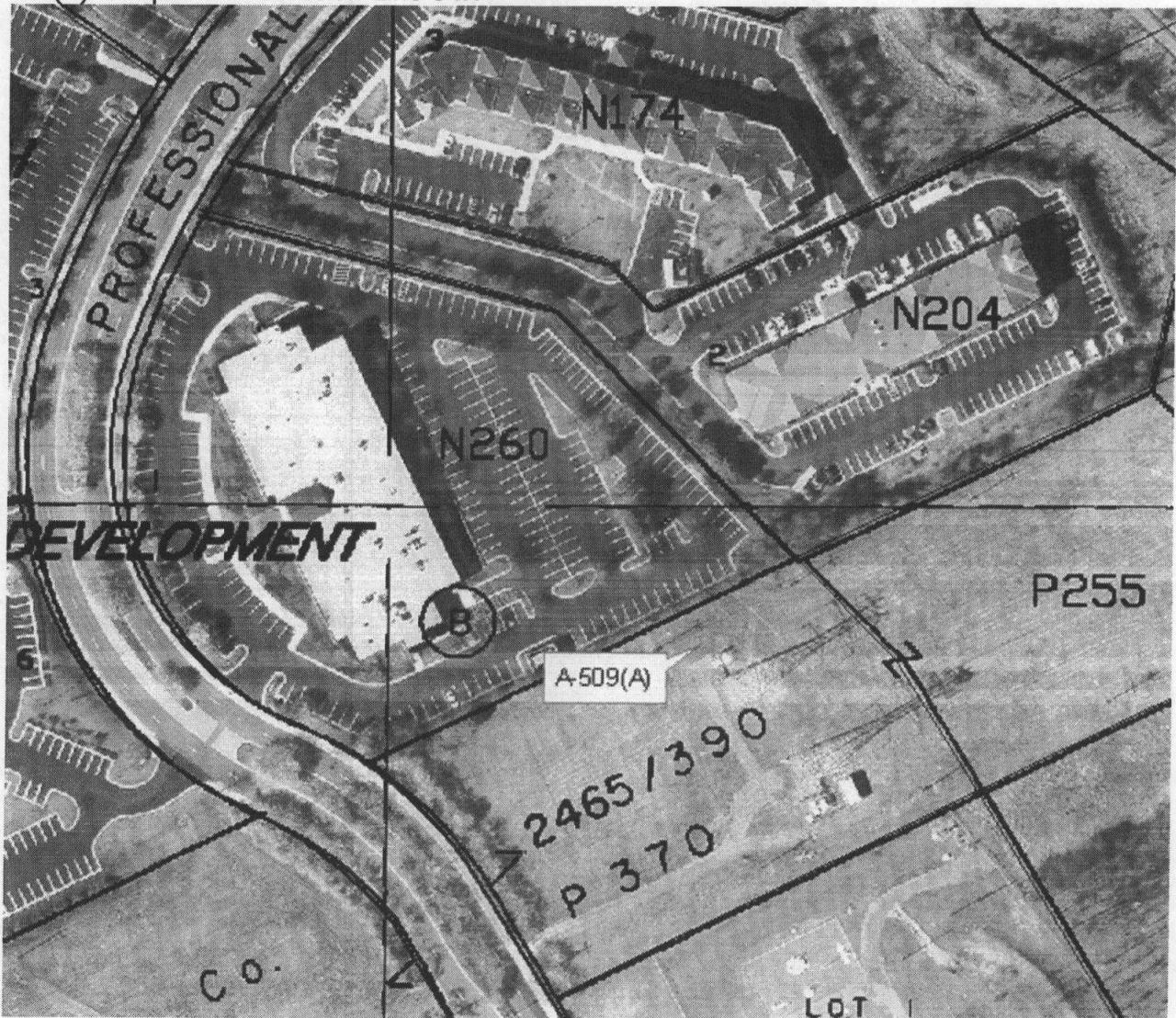
Dave Humpton, City Manager
Cathy Borten, City Attorney
Britta Monaco, Public Information Office
Doris Stokes, City Manager's Office
Greg Ossont, Director, Planning &
Code Administration
Trudy Schwarz, Community Planning Dir.
Wes Burnette, Director, Permits & Inspections
Jeff Baldwin, City Web Administrator (via email)

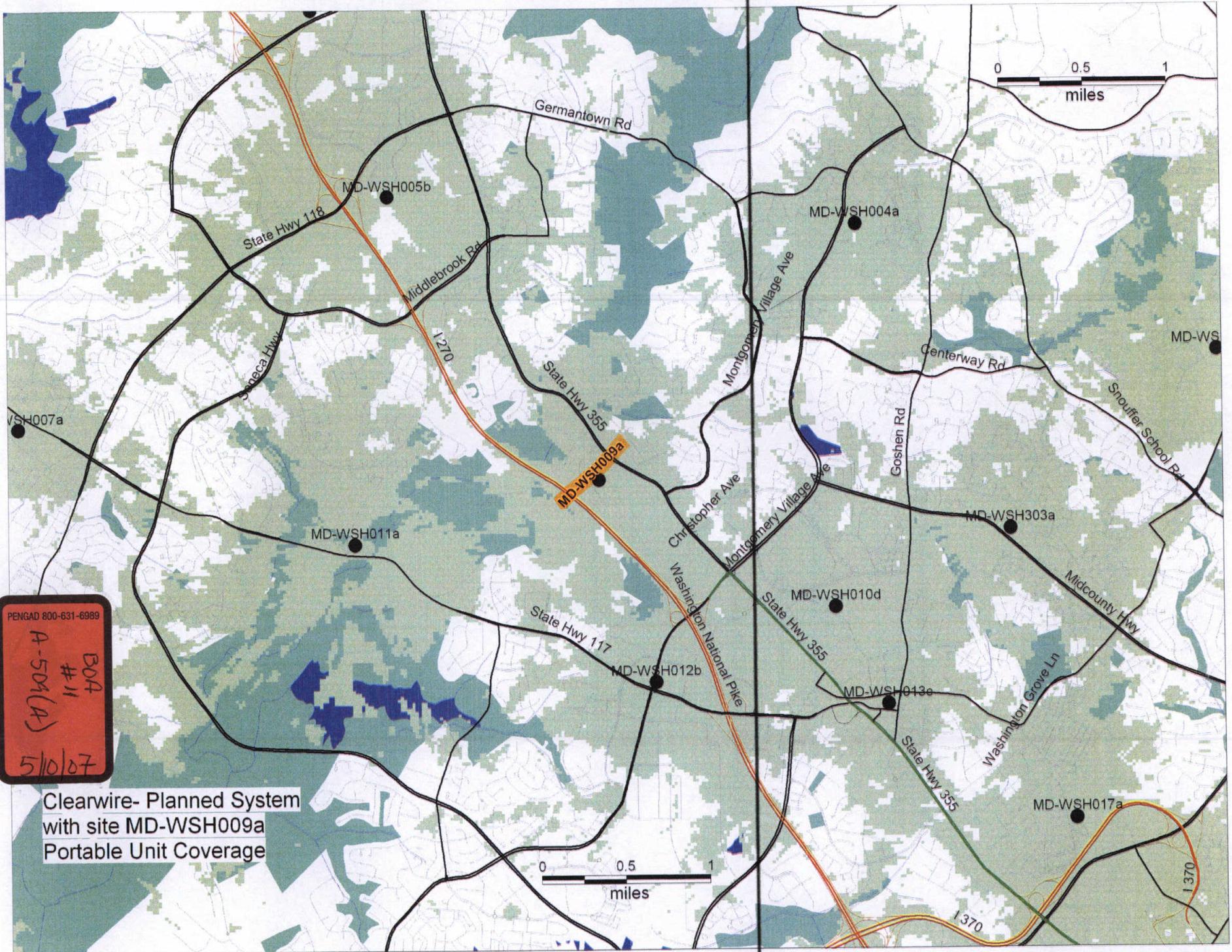
BOARD OF APPEALS MEMBERS:

Harvey Kaye, Chairperson
Richard Knoebel, Vice Chairperson
Gary Trojak
Victor Macdonald
Carol Rieg
David Friend, Alternate

PLANNING COMMISSION

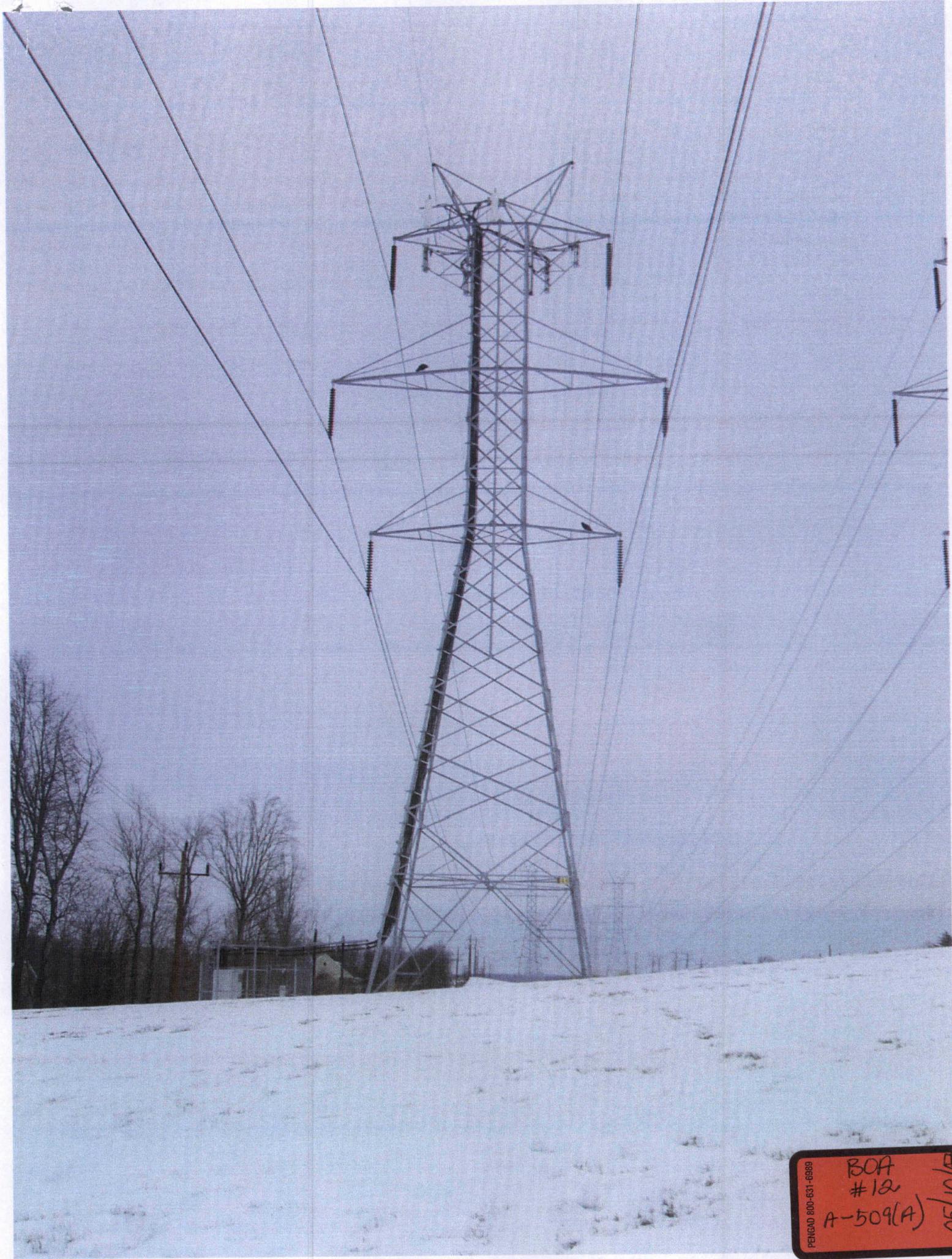
A-509(A) – Pepco Transmission Line 84N





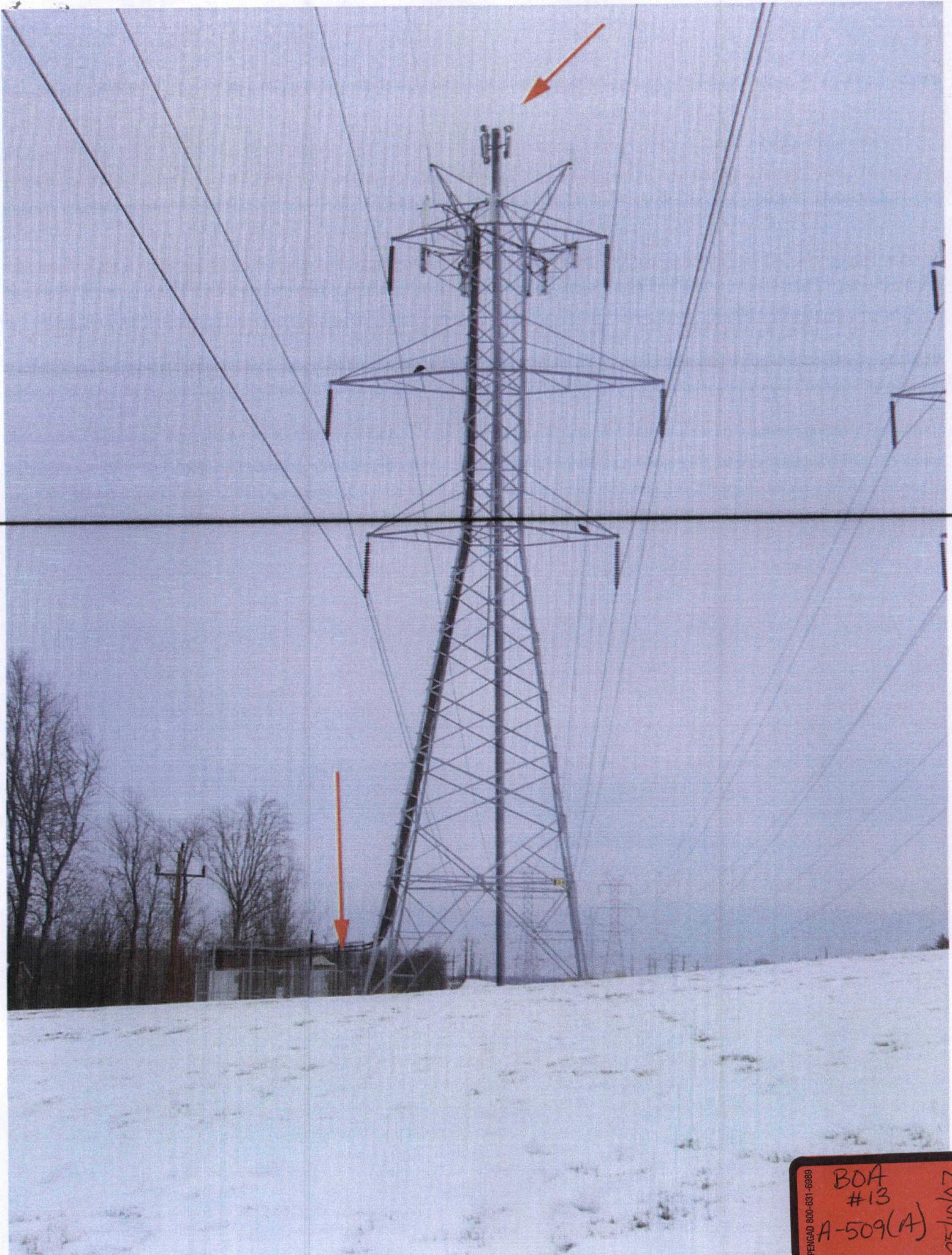
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 A-504(A)
 B04 #11
 5/10/07

Clearwire- Planned System
 with site MD-WSH009a
 Portable Unit Coverage



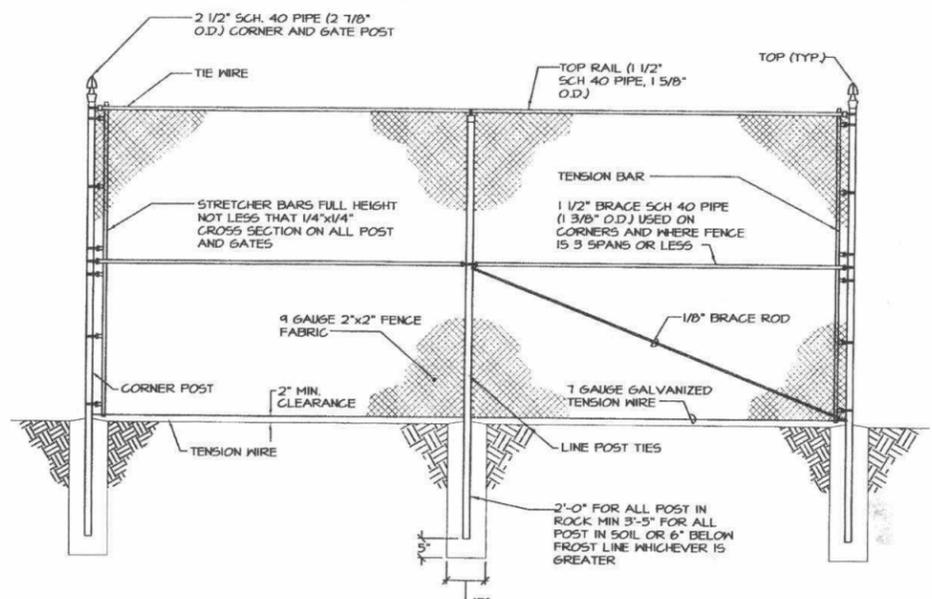
BOA
#12
A-509(A) 05/10/07

PENGAD 800-651-6939

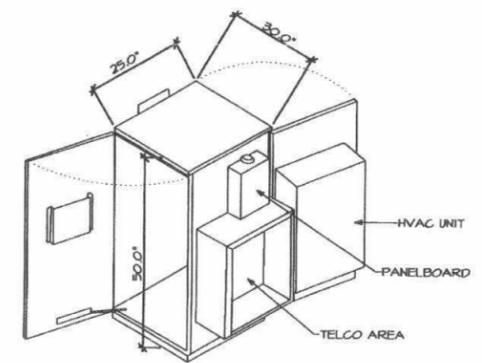


PENGAD 800-631-6689
BOA
#13
A-509(A)
05/16/07

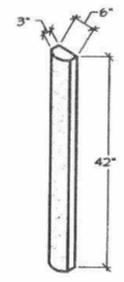
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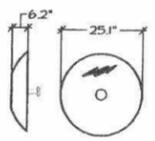
DETAIL - CHAIN LINK FENCE
NO SCALE



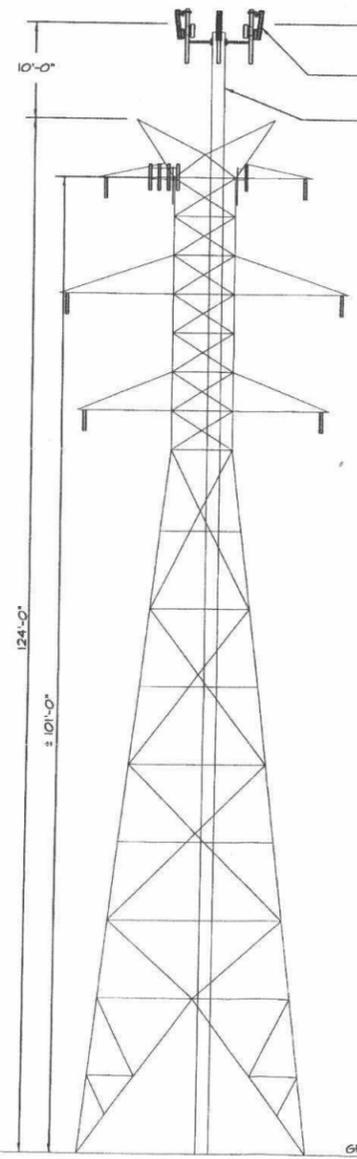
DETAIL - CLEARWIRE CABINET
NO SCALE



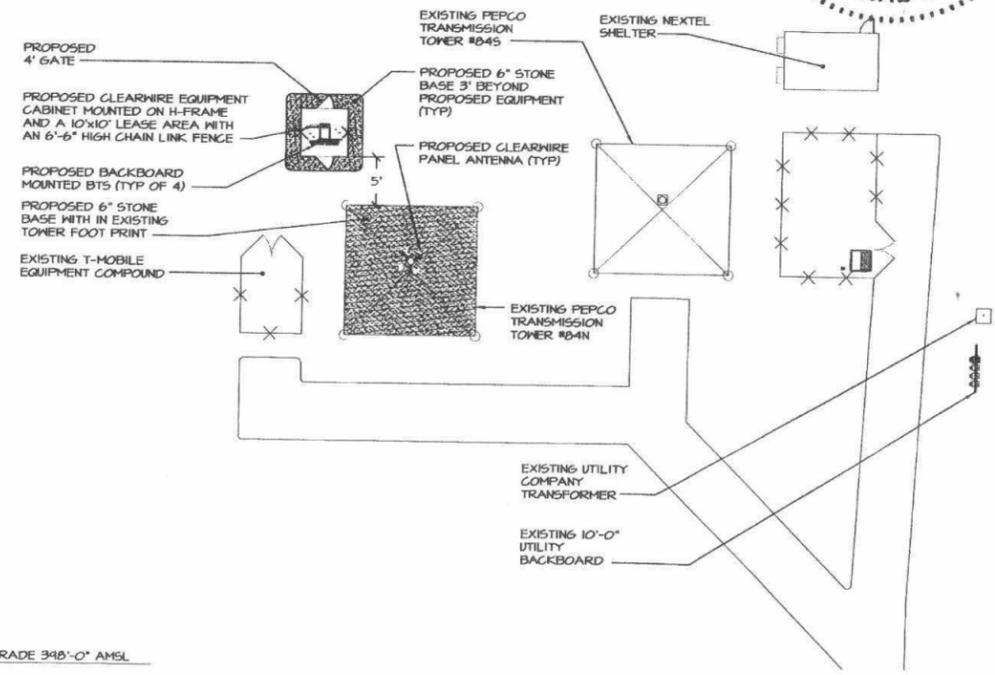
DETAIL - PANEL ANTENNA
NO SCALE



DETAIL - MICROWAVE ANTENNA
NO SCALE



TOWER ELEVATION
SCALE: 1/8" = 1'-0"



COMPOUND LAYOUT
SCALE: 1/8" = 1'-0"



GENERAL NOTES

1. CONTRACTOR SHALL NOTIFY "MISS UTILITY" (1-800-251-TTTT) 48 HOURS PRIOR TO DOING ANY EXCAVATION IN THIS AREA. CONTRACTOR SHALL CONTACT A SUBSURFACE UTILITY LOCATOR FOR LOCATION OF EXISTING UTILITIES PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION ACTIVITIES. CONTRACTOR SHALL VERIFY EXISTING UTILITY LOCATIONS BY TEST PIT AS NECESSARY. LOCATION OF UTILITIES SHOWN ON THIS PLAN ARE APPROXIMATE AND FOR PLANNING PURPOSES ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES. DAMAGE TO UTILITIES OR PROPERTY OF OTHER BY THE CONTRACTOR DURING CONSTRUCTION SHALL BE REPAIRED TO PRECONSTRUCTION CONDITIONS BY THE CONTRACTOR.
2. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH ALL STATE AND LOCAL CODES AND ORDINANCES, THE LATEST EDITION THEREOF.
3. ANY PERMITS WHICH MUST BE OBTAINED SHALL BE THE CONTRACTOR'S RESPONSIBILITY. CONTRACTOR SHALL SECURE ALL NECESSARY PERMITS FOR THIS PROJECT FROM ALL APPLICABLE GOVERNMENTAL AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ABIDING BY ALL CONDITIONS AND REQUIREMENTS OF THE PERMITS.
4. CONTRACTOR SHALL COORDINATE ALL UTILITY CONNECTIONS WITH APPROPRIATE UTILITY OWNERS.
5. THESE PLANS ARE NOT FOR RECORDATION OR CONVEYANCE.
6. EXISTING PAVEMENT AND OTHER SURFACES DISTURBED BY CONTRACTOR (WHICH ARE NOT TO BE REMOVED) SHALL BE REPAIRED TO PRECONSTRUCTION CONDITIONS BY THE CONTRACTOR.

GSE
GLOCK SMIDT
ENGINEERING, INC.
1374 W. JARRETTSVILLE ROAD
FOREST HILL, MARYLAND 21050
PHONE: 410.863.9293
FAX: 410.863.9295
WWW.GSEL.COM

clearwire
wireless broadband

CLEARWIRE - MD-HSH #004
PEPCO TOWER 84N
501 PROFESSIONAL DRIVE
GAITHERSBURG, MD
(CITY OF GAITHERSBURG, MD)

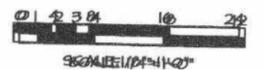
REVISIONS:

NO.	DESCRIPTION	DATE

LAST REV.:
PROJECT NO: 06055P
DATE: MARCH 16, 2007
SCALE: AS NOTED

TITLE:
TOWER
ELEVATION,
DETAILS AND
GENERAL NOTES

SHEET:
ZD-2



BOA #17
A-509(A) 5/10/07

GSE# 06055P

ADAM KNUBEL
CLEARWIRE US, LLC
7380 COCA COLA DRIVE
SUITE 106
HANOVER MD 21076

BPTC TWO LLC
1750 TYSONS BLVD FL 4
MC LEAN VA 22102

POTOMAC ELECTRIC POWER CO
C/O CORP TAX DEPT STE 5617
701 9TH ST NW
WASHINGTON DC 20068

ARE-QRS CORP
C/O DELOITTE & TOUCHE LLP
2235 FARADAY AVE #0
CARLSBAD CA 92008

BRE/ESA MD PROPERTIES
BUSINESSTRUST
C/O EXTENDED STAY HOTELS
100 DUNBAR ST
SPARTANBURG SC 29306

POTOMAC ELECTRIC POWER CO
C/O CORP TAX DEPT STE 5617
701 9TH ST NW
WASHINGTON DC 20068

BP REALTY INVESTMENTS LLC
1750 TYSONS BLVD FL 4
MC LEAN VA 22102

COLONIAL PIPELINE CO
PO BOX 1624
ALPHARETTA GA 30009

TRANSWESTERN-ROBINSON I LLC
C/O CORPORATE OFFICE PROP LP
8815 CENTRE PARK DR STE 400
COLUMBIA MD 21045

PENGAD 800-631-6999

BOA
#18
A-509(A)

CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland
(301) 258-6330

**BOARD OF APPEALS
RESOLUTION APPROVING**

AN APPLICATION REQUESTING AN AMENDMENT TO SPECIAL EXCEPTION A-509 TO ERECT A TELECOMMUNICATIONS FACILITY ATTACHED TO THE PEPCO TOWER #84-N LOCATED AND RELATED GROUND EQUIPMENT IN THE R-A (LOW DENSITY RESIDENTIAL) ZONE AS ALLOWED BY SECTION 24-25(11) OF THE ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE), EAST OF PROFESSIONAL DRIVE IN THE PEPCO RIGHT-OF-WAY, GAITHERSBURG, MARYLAND.

A-509(A)

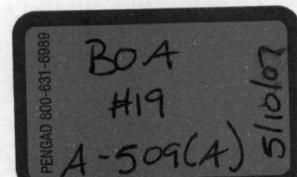
OPINION

This matter has come before the Board of Appeals as a special exception request by Clearwire US, LLC, to add four (4) panel antennas attached to the Potomac Electric Power Company (PEPCO) Tower #84-N and a fenced 10 foot x 10 foot (100 square feet) stone base pad for (1) equipment cabinet under six (6) feet in height. The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter. This case concerns a request for the approval of a telecommunications facility attached to the PEPCO tower #84-N and related ground equipment east of Professional Drive in the PEPCO right-of-way (ROW) in Gaithersburg, Maryland in the R-A (Low Density Residential) Zone.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [Section 24-25(11)] in the R-A Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

Mr. Adam Knubel, agent for Clearwire US, LLC, originally filed the application and exhibits on April 6, 2007. The application requested an amendment to special exception A-509 for a four (4)



additional antennas mounted on a Fort Worth pole at the 134-foot mark on an existing PEPCO tower east of Professional Drive in the R-A (Low-Density Residential) Zone, Gaithersburg, Maryland. The original application requested special exception approval for four (4) panel antennas and four (4) dish antennas. However, the dish antennas, under Section 24-167A of the city's zoning ordinance do not require special exception approval. Therefore, the Board of Appeals review does not include the four (4) dish antennas.

In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their May 2, 2007 regularly scheduled meeting. Following introduction and discussion from City of Gaithersburg staff and the applicant, the Planning Commission analyzed the application and made a recommendation to the Board of Appeals that the special exception be approved with six conditions.

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as Clearwire US, LLC ceases to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as Clearwire US, LLC ceases to operate, its antennas, cabinets and associated equipment shall be removed;
3. Clearwire US, LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits #10 and #11;
4. Installation of antennas and associated equipment must be completed by May 10, 2008;
5. If the installation is not complete by May 10, 2008, the petitioner must request a time extension, in writing, prior to May 10, 2008 and each subsequent year thereafter until such time as the installation is complete;
6. Prior to submittal of building permit applications, applicant to submit amended tower elevations to reflect the height of the proposed Clearwire antennas RAD center as 134 feet.

The Board of Appeals held a public hearing on Thursday, May 10, 2007, at 7:30 p.m. at City Hall. Notice of the public hearing was published in the April 25, 2007, issue of the *Gaithersburg Gazette*; the property was properly posted, and notice of public hearing was sent to the applicant and surrounding property owners on April 25, 2007

The Board reviewed 24 exhibits, including the Applicant's summary of proof, plans with tower and antenna specifications, the lease agreement, coverage projection maps, antenna and installation photographs and the recommendation of the Planning Commission. Planner Seiden noted that the tower was the subject of a special exception, A-509, approved in July 2003 for nine panel antennas by T-Mobile USA. PEPCO Tower 84S immediately to the south of the subject tower was the subject of two special exceptions for similar installations by Nextel Communications (A-486) and AT&T Wireless (A-474). A 15 foot wide stone access drive was installed as part of the A-474 special exception and was extended to Tower #84-N as part of the A-509 approval. Ms. Seiden further noted nearby property owners written concerns (Exhibits #20-#22) regarding four microwave antennas that were included in the original application. However, microwave antennas are permitted by right in the R-A zone and therefore are not a part of the Board of Appeal's review. Adam Knubel, agent representing Clearwire US, presented argument on behalf of the applicant citing the applicant's compliance with Section 24-167A, of the Zoning Ordinance and describing Clearwire's network goals and coverage needs in the area. There was no additional testimony in opposition to the subject request. Following the testimony and arguments, the Board closed the record.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

* * *

DIVISION 1. R-A ZONE, LOW DENSITY RESIDENTIAL

* * *

Sec. 24-25 . Uses permitted as special exceptions.

* * *

(11) Telecommunications facilities, subject to requirements of Section 24-167A(D)1.&2.

* * *

Section-24-167A. Satellite television antennas and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals and/or telecommunications facilities.

* * *

(D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) *Public Property.*
 - (i) A private telecommunication facility may be located on public property or attached to an existing structure owned or operated by the City of Gaithersburg and shall be a permitted use in all zones. The use of any property owned or operated by the city shall be at the discretion of the city council and shall not be subject to the same conditions and requirements as are applicable to such facilities on privately owned property. The city council may but is not required to hold a public hearing prior to its decision to allow the use of property owned or under the control of the city.
 - (ii) A private telecommunications facility may be located on public property of or

attached to an existing structure owned or operated by a county, state, federal or other non-city governmental agency or on the property of an independent fire department or rescue squad subject to the same conditions and requirements as are applicable to such facilities on privately owned property.

- (e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the federal communications commission, the federal aviation administration, or the city.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three (3) telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three (3) telecommunications carriers may be permitted by special exception when approved by the board of appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two (2) monopoles may be located within one thousand (1,000) feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two (2) or more monopoles may be located within one thousand (1,000) feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within one thousand (1,000) feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.
- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
- (1) Complies with all of the standards contained in Section 167A(C)1.
 - (2) The location selected is necessary for the public convenience and service.
 - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
 - (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
 - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two additional antennas and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
 - (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least thirty (30) feet in height in any multi-family residential zone or non-residential zone; and fifty (50) feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
 - (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least thirty (30) feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
 - (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and

is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.

- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
- (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
- (11) The board must also find that a free standing monopole or other support structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (c).
- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone,

provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

- (c) Location Requirements for structure. A monopole or other support structure must be located as follows:
 - (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
 - (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

* * *

ARTICLE VII. Board of Appeals.

* * *

Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

* * *

(b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

The board of appeals shall prescribe a time limit within which the use for which the special exception is required shall be commenced or completed. Failure to begin or complete, or both, such action within the time limit set shall void the special exception unless otherwise extended by the board.

* * *

Sec. 24-189. Findings required.

* * *

(b) Special exceptions. A special exception may be granted when the board of appeals finds from the evidence of record that the proposed use:

(1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article;

(2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;

(5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;

(6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

Findings and Conclusions

Based on the appellants' arguments, binding testimony and evidence of record, the Board finds that the application proposes to construct, operate and maintain four (4) panel-type antennas measuring approximately 36 inches high x 6 inches wide x 5 inches in depth attached to a Fort Worth tower within the PEPCO tower #84-N at a height of approximately 136 feet and a screened 10 foot x 10 foot (100 square feet) stone equipment pad containing one (1) equipment cabinet at a height of 50" high x 30 inches wide x 25 inches deep. The location of the antennas is within the R-A (Low-Density Residential) Zone and is allowed by special exception as stated in Section 24-25(11) of the Zoning Ordinance (Chapter 24 of the City Code).

The applicant has shown that the height of the southern PEPCO lattice tower east of Professional Drive is approximately 124 feet and the proposed antennas will be attached to a "Fort Worth" tower at a height of approximately 134 feet atop the existing lattice tower structure. The unmanned equipment cabinet for the antennas is located on the ground on a 10 foot x 10 foot stone pad approximately 5 feet east of the base of the PEPCO tower. The equipment cabinets will be enclosed by a six foot, six inch (6', 6") chain link fence. The visual impact of the proposed antennas is limited due to the fact that they are located within and attached to the existing transmission tower structure. The propagation maps have shown that location selected will enhance the coverage for public convenience and service and fill a hole within the Clearwire system.

The Board finds that the applicant has proved that the application is permissible by Section 24-25(11) and that it complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the City of Gaithersburg Land Use Plan. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(D)1. and 2. as discussed in the previous section.

The testimony of the applicant's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable, vibrations, fumes, odors, dust, toxicity, glare or physical activity. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Because the antennas are to be camouflaged within the PEPCO Right of Way as attached to the lattice tower which is 124 feet in height, the applicant has shown that this application is in harmony with the general character of the neighborhood in relation to the design and scale of the antennas. This will also maintain a similar appearance as the lattice tower and not require additional landscaping or screening. Because the use will only require quarterly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The land and structure will not increase the need for more services. The applicant has shown that this use is not located near or within any of the City's historic districts. In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a telecommunications facility by Mr. Knubel. The applicant has shown compliance with Sections 24-167A(D)1. and 2. and 24-189(b).

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 10th day of May, 2007, that Case A-509(A), the petition of Clearwire US, LLC requesting an amendment to special exception A-509 for an additional telecommunications facility in the R-A (Low Density Residential) Zone attached to PEPCO tower #84-N east of Professional Drive, Gaithersburg, Maryland, be APPROVED with the following conditions.

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as Clearwire US, LLC ceases to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as Clearwire US, LLC ceases to operate, its antennas, cabinets and associated equipment shall be removed;

3. Clearwire US, LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits #10 and #11;
4. Installation of antennas and associated equipment must be completed by May 10, 2008;
5. If the installation is not complete by May 10, 2008, the petitioner must request a time extension, in writing, prior to May 10, 2008 and each subsequent year thereafter until such time as the installation is complete;
6. Prior to submittal of building permit applications, applicant to submit amended tower elevations to reflect the height of the proposed Clearwire antennas RAD center as 134 feet.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 10th day of May, 2007. Board Members Kaye, Knoebel, Trojak, Macdonald and Rieg being present and voting in favor of the action.

Harvey Kaye, Chairperson
Board of Appeals

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 10th day of May, 2007

Caroline Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.

Caroline Seiden - Proposed Microwave Dish

From: <HENRYPJ@aol.com>
To: <twaite@hsus.org>
Date: 04/30/2007 7:29 AM
Subject: Proposed Microwave Dish
CC: <bdalrymple@linowes-law.com>, <asb@sitesolutionsinc.net>, <CSeiden@gaithersburgmd.gov>, <FFelton@gaithersburgmd.gov>, <brad@klineassoc.com>

Dear Tom:

In reviewing the recent Planning Commission agenda for May 10th, I noted that there is a Microwave dish being proposed to be placed near the HSUS site. Microwave dishes emit a high frequency unidirectional microwave "beam" that can and will fry anything in its way. Beams also drop as they travel, so alignment is critical.

The Web Link is:

[Click Here: Check out "The City of Gaithersburg"](#)

These dishes, if aligned in the direction of the HSUS site or Casey East or West, would likely prevent your building from rising to or above that height. At 124 to 134 feet elevation proposed for the dishes, that will be the equivalent of a 8-10 story building depending on floor heights, relevant floor elevations of the buildings, and the topo of the adjoining tower. Both the HSUS and the Casey West building heights proposed exceed this height, as could portions of Casey East's development. This will be especially true for the HSUS condos and the Casey west buildings that proposed to be are built on above ground parking decks, where it could impact even shorter height.

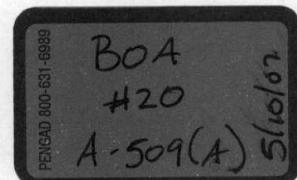
Since we do not know your building locations or final heights, I would recommend that this fact be brought to the City Planning Staff's attention. The non-microwave panel types are not an issue to my knowledge.

I apologize for only now finding out about this, but the State property records list an incorrect address for the BP entities which they are still in the process of correcting (our office is in Potomac, MD) , so I never received notice of the pending hearing -- just found it by chance on the web. I figure better to let the City and applicant know now before the hearing so that they can try to address the issue.

Best regards,

Peter Henry
BP Realty Investments, LLC
BPTC 2, LLC

See what's free at <http://www.aol.com>.



Caroline Seiden - Clearwire Hearing

From: <HENRYPJ@aol.com>
To: <CSeiden@gaitthersburgmd.gov>
Date: 05/01/2007 7:51 AM
Subject: Clearwire Hearing
CC: <FFelton@gaitthersburgmd.gov>, <twaite@hsus.org>

Dear Caroline:

While I do not view the microwave units as particularly hazardous when properly aligned, I was rather hoping that the applicant would have provided some information showing why they aren't that I could convey to the Humane Society and Brad. Hopefully they will come thru today with the info.

Regardless, I do think it is in the City's and surrounding property owners best interest to have the Applicant acknowledge:

- (1) that there are buildings proposed now and in the future which will likely block his beams,
- (2) that when such buildings are placed under construction, he agrees to discontinue the use of such Microwave that aligns within twenty feet of any portion of such building,
- (3) that the City's granting such Special Exception does not grant him rights to halt or object to such construction, and
- (4) acknowledge in writing as part of the approval that he will not oppose or attempt to delay the construction of such buildings when they do occur.

Maybe this could be built in as a condition to approval? Otherwise, my concern is that we could end up looking at him appealing future building permits.

See you tonight.

many thanks

Peter Henry
BP Realty

See what's free at <http://www.aol.com>.

PENGLD 800-631-6939
BOA
#21
A-509(A) 5/10/07

Caroline Seiden - RE: Clearwire Hearing

From: "Dalrymple, C Robert - CRD" <bdalrymple@linowes-law.com>
To: <HENRYPJ@aol.com>, <CSeiden@gaithersburgmd.gov>
Date: 05/01/2007 10:21 AM
Subject: RE: Clearwire Hearing
CC: <FFelton@gaithersburgmd.gov>, <twaite@hsus.org>, "Al Blumberg (E-mail)"
<asb@sitesolutionsinc.net>

On behalf of HSUS, we join in these comments and concerns. As you know, HSUS is preparing to submit a sketch plan for redevelopment of it's land in the MXD zone, and we want to ensure that anything being approved relating to the microwave units not be an impediment to the future redevelopment of the HSUS parcel which is a strategically important parcel for the City. Al Blumberg will be contacting Caroline directly to learn more about this proposal and will attend the hearing if necessary to protect the interests of HSUS. Thank you. Bob

-----Original Message-----

From: HENRYPJ@aol.com [mailto:HENRYPJ@aol.com]
Sent: Tuesday, May 01, 2007 7:51 AM
To: CSeiden@gaithersburgmd.gov
Cc: FFelton@gaithersburgmd.gov; twaite@hsus.org
Subject: Clearwire Hearing

Dear Caroline:

While I do not view the microwave units as particularly hazardous when properly aligned, I was rather hoping that the applicant would have provided some information showing why they aren't that I could convey to the Humane Society and Brad. Hopefully they will come thru today with the info.

Regardless, I do think it is in the City's and surrounding property owners best interest to have the Applicant acknowledge:

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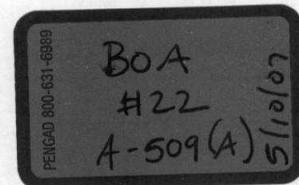
Maybe this could be built in as a condition to approval? Otherwise, my concern is that we could end up looking at him appealing future building permits.

See you tonight.

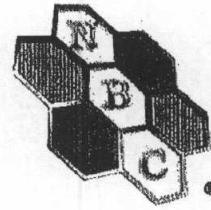
many thanks

Peter Henry
BP Realty

See what's free at <http://www.aol.com>.



**NETWORK
BUILDING &
CONSULTING, LLC**



May 2, 2007

City of Gaithersburg
Planning & Code Administration
31 South Summit Avenue
Gaithersburg, MD 20877
ATTN: Caroline H. Seiden, Planner

RE: Clearwire US, LLC; File Numbers A-477(A) and A-509(A)

Dear Ms. Seiden:

This letter is in response to your inquiry about the microwave portion of the above referenced applications. Clearwire uses microwave as its preferred method of backhaul. Microwave requires direct line of site to work. With that being said, there are other options when it comes to backhaul. Specifically you had mentioned the proposed installation at 501 Professional Drive as an area of concern for the adjacent property owners. We acknowledge that the property located to the south is undeveloped and has a high probability of being developed in the future. If the properties are developed in a manner that blocks the line of site for the microwave then at that time Clearwire will have to redesign the backhaul for this site. That may include a change in azimuth or running T-1 service to the site. We recognize that we do not have a legal right or authority to dictate how the adjacent properties are developed.

If you have any questions or need further information, please contact me at (410) 712-7092 Ext. 1083. Thank you for your assistance with this submission.

Sincerely,

Adam R. Knubel
Zoning Manager
Network Building & Consulting, LLC
(consultants to Clearwire)

BOA
#23
A-509(A)
5/10/07
PENGAD 800-631-6989

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Board of Appeals
FROM: Planning Commission
VIA: Caroline Seiden, Planner
DATE: May 3, 2007
SUBJECT: A-509(A) – Adam Knubel for Clearwire US, LLC

The application requests a Special Exception to erect a Telecommunications facility, to include four panel antennas and four dish antennas on an existing Pepco transmission tower, (84N), and associated ground equipment at the PEPCO transmission line off of Professional Drive, Gaithersburg, Maryland. The property is located in the R-A (Low Density Residential) Zone. The Special Exception is allowed by §24-25(11) in compliance with §24-167A(D)1.& 2.of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

At its regular meeting on May 2, 2007, the Planning Commission made the following motion:

Commissioner Levy moved, seconded by Commissioner Winborne, to recommend Special Exception Case A-509(A) for APPROVAL to the Board of Appeals with six conditions:

1. Prior to the issuance of a building or site work permit, petitioners are to provide an executed lease from the property owner that requires at such time as Clearwire US, LLC ceases to operate, that the antennas, cabinets and associated equipment must be removed;
2. At such time as Clearwire US, LLC ceases to operate, its antennas, cabinets and associated equipment shall be removed;

REC'D 800-631-6989
BOA
#24
A-509(A) 5/10/07

3. Clearwire US, LLC is to submit an actual coverage threshold map to the Board of Appeals sixty (60) days after the equipment becomes operational. The map will be the same type as provided in Exhibits #10 and #11;
4. Installation of antennas and associated equipment must be completed by May 10, 2008;
5. If the installation is not complete by May 10, 2008, the petitioner must request a time extension, in writing, prior to May 10, 2008 and each subsequent year thereafter until such time as the installation is complete;
6. Prior to submittal of building permit applications, applicant to submit amended tower elevations to reflect the height of the proposed Clearwire antennas RAD center as 134 feet.

Vote: 5-0